IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 255 (S/S) OF 2003

Bhagwat Pandey s/o Sri Khima Nand Pandey
R/o Village Sarna, P.O. Gunialekh, Tehsil Dhari,
District Nainital ..... Petitioner.

Versus

1. Union of India, through Defence Secretary, New Delhi.
2. Chief of the Army Staff Army Headquarter, South Balock, New Delhi
3. General Officer Commanding-in-Chief, Central Command, Lucknow
4. Commandant, Kumaon Regimental Center Ranikhet, District Almora
5. Lt. Colonel D.K. Ayodhya A.M.C. Military Hospital, Kumaon Regimental Center Ranikhet, District Almora.

.....Respondents.

Date: 29.3.2006

Sri Manoj Tewari, learned counsel for the petitioner.
A.G.A. counsel for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for issuance of a writ of mandamus directing the respondents to form a proper medical board and to re-examine the petitioner.

Briefly stated, the petitioner was selected for recruitment in the Army as a Soldier (GD) on 21.2.2001. Before his selection, the petitioner gave a written test, physical test and thereafter, he was medically examined. The petitioner reported Kumaon Regimental Center, Ranikhet on 4.4.2001 and he was discharged from the service on account of invalidated Medical Board on 10.6.21002.

The contention of the petitioner is that the respondent no. 2 has no right to pass the said order against the petitioner as the medical reports are contradictory to each other and the opinion of the doctors of both Military Hospitals differ from each other.

The respondents have filed counter affidavit and admitted in paragraph 2 of the counter affidavit that the petitioner was sent for primary medical examination, in which he was declared permanently unfit.

I have heard the learned counsel fro the parties and have gone through the documents on the record. Rule 15 of Army Rules, 1954 provides as under:-

> *"[15-A. Release on medical grounds.-(1) An officer who is found by a Medical board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.*
>
> *(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service, every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:*
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> *Provided that where in the opinion of the Medical Board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the*

disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition."

This is a case, in which there are two contradictory reports of the Doctors. The first medical examination of the petitioner was conducted on 4.4.2001 and the petitioner was found fit for recruitment for the Army.

However, the second medical examination was conducted on 20.2.2002. The petitioner was subjected to routine pathological test along with C.T. Scan E.E.G., X-Ray etc. and also the reports. However the doctors have given contradictory opinions regarding the illness of the petitioner. Evidently there is two conflicting medical opinion of the Doctors and as such the authorities concerned ought to have obtained the opinion of Medical Board but instead of directing the petitioner to appear before the Medical Board and the authorities concerned discharged him from service. It will be in the interest of justice if the petitioner be got examined by a Medical Board for definite opinion regarding his physical fitness for military service.

Therefore, the respondents are directed to constitute a Medical Board and get the petitioner examined before the Medical Board within two months after the receipt of the certified copy of this order.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 29-3-2006 **Rajesh Tandon, J.**

***Dhyani**